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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

19 *IN RE: 23ANDME, INC. CUSTOMER DATA*  
20 *SECURITY BREACH LITIGATION*

Case No. 3:24-md-03098-EMC

21 This Document Relates To: All Actions

**SUBMISSION RE: SPECIAL  
SETTLEMENT MASTER**

Pursuant to the Court's Pretrial Order No. 1 (Dkt. No. 11), Plaintiff Rudy K. Thompson and his counsel Cotchett, Pitre & McCarthy LLP and Bottini & Bottini, Inc. hereby suggest Hon. Layn Phillips (Ret.), Hon. Jay C. Gandhi (Ret.), and Hon. Daniel Weinstein (Ret.), to be considered for appointment as the Special Settlement Master in this case.

**Hon. Layn Phillips (Ret.)** is the founder of Phillips ADR Enterprises, and both a former United States Attorney and former United States District Judge.<sup>1</sup> Judge Phillips has extensive experience with data breach cases, including in the Northern District of California. For example, Judge Phillips presided over the mediation of the *Anthem Data Breach Litigation*, which resulted in a \$115 million settlement and resolved claims that Anthem, one of the nation's largest healthcare companies, put 78.8 million customers' personal information, including social security numbers and health data, at risk in a 2015 data breach. *See In re Anthem, Inc. Data Breach Litigation* (N.D. Cal. 2018) 327 F.R.D. 299.

The Cotchett and Bottini firms have worked with Judge Phillips in other similar cases, including *In re Apple Inc. Device Performance Litigation*, alleging that Apple issued software updates that slowed down the performance of iPhones in violation of the Computer Fraud and Abuse Act, and *In Re: TikTok, Inc., Consumer Privacy Litigation*, where users alleged that the TikTok app collected and disclosed personal data in violation of the Illinois Biometric Information Privacy Act, the Video Privacy Protection Act, and other consumer and privacy protection laws. In *Apple*, Judge Phillips served as mediator and successfully oversaw a global settlement reached by the parties in the federal and state actions, whereby Apple agreed to pay between \$310 to \$500 million to impacted consumers. *See In re Apple Inc. Device Performance Litigation*, Case No. 5:18-md-02827-EJD (N.D.Cal.). In *TikTok*, following the consolidation of 21 federal lawsuits, Judge Phillips helped the parties settle the complex and contentious case for \$92 million. As part of the settlement, the parties agreed that TikTok would no longer record a user's biometric information, including facial characteristics, nor track a user's location using GPS data. TikTok

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<sup>1</sup> More information regarding Judge Phillips' background and Phillips ADR Enterprises can be found at Phillips' website: <https://phillipsadr.com/>

1 also committed to stop sending U.S. users’ data overseas and no longer collect data on draft videos  
 2 before the content is published. *See In re TikTok, Inc., Consumer Privacy Litigation* (N.D. Ill.  
 3 2022) 617 F.Supp.3d 904, 938, appeal dismissed sub nom. *In re TikTok Inc., Consumer Privacy*  
 4 *Litigation* (7th Cir., 2022) 2022 WL 19079999.

5 **Hon. Jay C. Gandhi (Ret.)** previously served as a United States Magistrate Judge for the  
 6 Central District of California and is currently a mediator with JAMS.<sup>2</sup> Judge Gandhi also has  
 7 extensive experience resolving complex privacy and data breach class actions. Judge Gandhi  
 8 mediated the \$725 million class action settlement in *In re: Facebook, Inc. Consumer Privacy User*  
 9 *Profile Litigation*, where the plaintiffs alleged that Facebook—without consent—granted  
 10 numerous third parties access to users’ content and information, and that Facebook failed to  
 11 adequately monitor the third parties’ access and use of that information. Judge Gandhi helped the  
 12 parties negotiate commitments by Facebook to cease improper data sharing without consent and  
 13 Facebook’s whitelisting practices. In his order granting final approval, Judge Chabria commended  
 14 the settlement as an “excellent result,” while also crediting Judge Gandhi for his “critical”  
 15 involvement in “brokering a fair settlement.” *See In re Facebook, Inc. Consumer Privacy User*  
 16 *Profile Litigation* (N.D. Cal. 2023) 2023 WL 8443230, at \*3.

17 The Cotchett and Bottini firms also worked with Judge Ghandi as a mediator in *In re Zoom*  
 18 *Video Communications, Inc. Privacy Litigation*, Case No. 5:20-cv-02155-LHK (N.D.Cal.), a  
 19 nationwide class action alleging that Zoom failed to provide end-to-end encryption of Zoom  
 20 meetings, improperly shared user information, and left users exposed to “Zoombombing” by  
 21 unauthorized third parties. The cases involved several novel privacy and data protection issues,  
 22 including the application of Section 230 of the Communication Decency Act and alleged violations  
 23 of privacy and unfair competition laws in California. With Judge Ghandi’s assistance, the parties  
 24 reached a settlement requiring Zoom to pay \$85 million in cash and implement a series of  
 25 comprehensive reforms to its business.

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 27 <sup>2</sup> More information regarding Judge Gandhi’s background and experience can be found at  
 28 the JAMS website: <https://www.jamsadr.com/gandhi/?tab=bio>

**Hon. Daniel Weinstein (Ret.)** a former judge on the Superior Court of San Francisco, is one of the founders of JAMS.<sup>3</sup> Judge Weinstein has significant experience in complex, multi-party, high-stake cases, including data breaches. Judge Weinstein mediated the *Yahoo! Inc. Customer Data Security Breach Class Action*, which concerned one of the largest-ever known data breaches, impacting up to 3 billion Yahoo accounts. Judge Weinstein also mediated the related federal securities class action. Yahoo! ultimately settled for \$117.5 million and agreed to improve the security for its users' personal information stored on its databases. The Settlement Fund also provided a minimum of two years of credit monitoring services, an alternative cash payment for those who already had credit monitoring services, and cash payments to those who demonstrated out-of-pocket losses. *See In re Yahoo! Inc. Customer Data Security Breach Litigation* (N.D. Cal., 2020) 2020 WL 4212811, at \*35, *aff'd* (9th Cir., June 27, 2022) 2022 WL 2304236. The Cotchett and Bottini firms served as co-lead counsel in the *In re Yahoo! Inc. Shareholder Litigation*, Lead Case No. 17-cv-307054 (Cal. Super. Ct., Santa Clara Cty.), which included both class and derivative claims and settled for \$29 million as well as injunctive relief.

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Each of these mediators has the experience and qualifications necessary to help ensure a fair and just outcome and would be well suited to serve as Special Settlement Master in this case.

Dated: May 20, 2024

COTCHETT, PITRE & MCCARTHY, LLP

/s/ Mark C. Molumphy

MARK C. MOLUMPBY

BOTTINI &amp; BOTTINI, INC.

/s/ Francis A. Bottini, Jr.

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FRANCIS A. BOTTINI, JR.

*Counsel for Plaintiff Rudy K. Thompson*

<sup>3</sup> More information regarding Judge Weinstein’s background and experience can be found at the JAMS website: <https://www.jamsadr.com/weinstein/>

**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

I, Mark C. Molumphy, attest that concurrence in the filing of this document has been obtained from the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of May 2024, at Burlingame, California.

By /s/ Mark C. Molumphy  
Mark C. Molumphy